

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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CERTIFIED ORIGINAL

JG Jane GROSSMAN
RS REPORTING Services

AT&T CORPORATION,)
)
Plaintiff,)
)
vs.)
)
DATAWAY INC. and dba DATAWAY)
DESIGNS,)
)
Defendants.)

No. C07-02440-EDL

DATAWAY, INC.,)
)
Counterclaimant,)
)
vs.)
)
AT&T CORPORATION,)
)
Counterdefendant.)

DEPOSITION OF SIMON LEWIS

April 15, 2008

Taken before JANE GROSSMAN, CSR No. 5225

JANE GROSSMAN REPORTING SERVICES
Certified Shorthand Reporters
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DEPOSITION OF SIMON LEWIS

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E X H I B I T S

(No exhibits introduced.)

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Proceedings Commenced: 1:53 p.m.

Proceedings Adjourned: 2:56 p.m.

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DEPOSITION OF SIMON LEWIS

BE IT REMEMBERED that, pursuant to Notice of Taking Deposition and on Tuesday, April 15, 2008, commencing at the hour of 1:53 p.m., at the Law Offices of KORNFIELD, PAUL, NYBERG & KUHNER, Lake Merritt Plaza, 1999 Harrison Street, Suite 2675, Oakland, California 94612, before me, JANE GROSSMAN, a Certified Shorthand Reporter of the State of California, personally appeared SIMON LEWIS, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

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A P P E A R A N C E S

TIMOTHY CARL AIRES, Attorney at Law, of the AIRES LAW FIRM, 180 Newport Center Drive, Suite 260, Newport Beach, California 92660, was present on behalf of Plaintiff and Counterdefendant AT&T Corporation.

ANNE-LEITH MATLOCK, Attorney at Law, of the MATLOCK LAW GROUP, PC, 1485 Treat Boulevard, Suite 200, Walnut Creek, California 94597, was present on behalf of Defendant and Counterclaimant Dataway, Inc. and dba Dataway Designs.

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1 TUESDAY, APRIL 15, 2008

1:53 P.M.

2 SIMON LEWIS,

3 having been sworn as a witness by the

4 Certified Shorthand Reporter,

5 testified as follows:

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7 EXAMINATION BY MR. AIRES

8 MR. AIRES: Q. Could you please state and
9 spell your name for the record?

10 A. Simon Lewis, S-i-m-o-n L-e-w-i-s.

11 Q. Are you currently employed?

12 A. Yes.

13 Q. By whom?

14 A. Dataway, Incorporated.

15 Q. How long have you been employed by Dataway?

16 A. Since its inception. I'm one of the founders.

17 Q. When was it formed?

18 A. 1994, I believe.

19 Q. What is your current title?

20 A. CEO.

21 Q. Has that been your title throughout your
22 tenure with Dataway?

23 A. No -- yes. I think, actually, as we
24 incorporated, I officially had the CEO title.

25 I referred to myself as "partner" for many

1 all day long.

2 Q. Okay.

3 A. And she said she can see them a mile away --

4 Q. All right.

5 A. -- and it happens all the time.

6 Q. And she said that?

7 A. Yes, she did.

8 Q. Did you write that down at the time, or do you
9 just recall that from your independent recollection?

10 A. I don't know whether I wrote it down or not,
11 but that's absolutely what she said.

12 Q. All right. And did she make any suggestions
13 or recommendations relative to your telephone service at
14 that time?

15 A. Telephone service? No, she didn't say
16 anything about our telephone service.

17 Q. Did she say anything about your telephone
18 system?

19 A. We discussed what type of system we had.

20 Q. What did you tell her?

21 A. I told her we had a Nortel, essentially a key
22 system, I guess. I think it's called a "key system."

23 Q. Do you know what model number it was?

24 A. I don't recall.

25 I still have it at my office.

1 Q. You still have the system?

2 A. Absolutely. It's sitting on the wall.

3 Q. Is it still in use today?

4 A. No. It was disconnected quite soon
5 afterwards, within a couple of weeks of all of this
6 stuff happening.

7 Q. All right. Did your company acquire the
8 system directly from Nortel?

9 A. No. We purchased it, I believe, through a
10 company that's long out of business. I'm trying to
11 recall. I think it began with a "W."

12 I can probably find that out, if it's
13 important. But it was purchased whenever -- 10 or 11
14 years ago.

15 Q. All right. Was it new or used when it was
16 acquired?

17 A. It was new.

18 Q. Did you have any maintenance contracts with
19 Nortel in effect relative to that system in the calendar
20 year 2006?

21 A. No.

22 Q. As I understand it, based on your testimony,
23 you spoke with this representative of AT&T regarding the
24 fact that it was a Nortel key system; is that right?

25 A. Correct, Nortel PBX key system. Yeah.

1 Q. Did she -- it was a PBX system?

2 A. It is a PBX, yeah. A key system is PBX. A
3 key system is a small PBX, basically.

4 Q. Did she make any recommendations or
5 suggestions regarding the system?

6 A. If I recall, we discussed how it could be that
7 somebody could make a call.

8 And she suggested that the way -- the only way
9 she knew was through the voice-mail system; in other
10 words, somebody dialing in remotely, like an employee
11 would dial in remotely to access their voice mail.

12 Q. Did you --

13 A. That is --

14 Q. Go ahead.

15 A. That is what she suggested was likely the
16 reason because, being in the, you know, Fraud
17 Department, or whatever department she was in, she sees
18 this stuff all day long.

19 And to paraphrase exactly what she said, these
20 calls stand out like a sore thumb. She can see them
21 instantly in the system. And alarms are going off all
22 day long.

23 Q. And so, she indicated that it was -- it
24 appeared to her that it was accessed through the
25 voice-mail system?

1 A. She suggested that that was the likely place
2 where it would be accessed through because it's,
3 basically, a very simple phone system.

4 Q. Did Dataway undertake its own independent
5 investigation to determine how it happened?

6 A. We don't know exactly how it happened, nor can
7 we say definitively how it happened.

8 We do know, because we suspect that it was
9 through the voice-mail system -- and one interesting
10 piece of information we gathered was a telephone number
11 that we believe was in Kansas by the area code -- our
12 caller ID picked it up, and it showed up on one of the
13 phones in the office.

14 We gave this to AT&T as the -- as potentially a
15 source of one of these calls that came in.

16 Q. Did you ever learn that it was -- that the
17 method used in making the access was through a 10-10-288
18 calling-code access number?

19 A. I don't know what you mean by that.

20 Q. So, the answer is that nobody ever told you
21 that?

22 A. I know what 10-10-288 is. That's an outbound
23 access code.

24 Q. Okay.

25 A. You asked me about how the call came in.

1 recovering our contiguous hundred block.

2 We actually had a hundred block of numbers in
3 the 659-1700 range -- 659-1700 to -1799. We've had that
4 block since maybe 2000, 2003, whatever.

5 We have the number block 882-8700 through
6 -8799. That was the block that we were working with our
7 local AT&T people to reconstitute correctly, which meant
8 that we actually had to go through a process of porting
9 numbers from one switch to another switch.

10 Q. But your company in July of 2006 had access to
11 exactly 100 lines?

12 A. I don't know what that means, access to a
13 hundred lines.

14 Q. You had 100 different telephone numbers?

15 A. We had probably more than 100 exactly, but we
16 had somewhere on the order of -- we had a contiguous
17 block of a hundred. We probably had 20 or 30 numbers in
18 the 882-8700 range that -- we were working to recover
19 all those numbers.

20 And then since then -- since, basically, the
21 middle of 2006, the original 659-1700 through -1799
22 number block we have given back to AT&T because we no
23 longer use it.

24 Q. Was service ever terminated due to the failure
25 to pay the \$11,534.67?

1 A. No.

2 Q. We had some discussion regarding these
3 negotiations with Ms. Cardswell.

4 Was an agreement ever reached relative to the
5 amount that would be paid by your company for these toll
6 charges?

7 A. No, there was no opportunity for an agreement
8 to be raised because she would not budge -- or her
9 manager would not budge -- from, I believe, their best
10 offer of something around 5,000-and-some-odd dollars for
11 what is equivalent to \$400 worth of service.

12 Q. Thank you for your time.

13 THE REPORTER: Off the record?

14 MR. AIRES: We're done.

15 (Whereupon, the deposition was concluded at
16 2:56 p.m.)

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